

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CASITA R. ROY and U.S. POSTAL SERVICE,
POST OFFICE, Houston, Tex.

*Docket No. 97-500; Submitted on the Record;
Issued October 26, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof in establishing that she sustained an emotional condition due to factors of her federal employment.

On August 30, 1994 appellant, then a 32-year-old distribution window clerk, filed a notice of traumatic injury indicating that on August 23, 1994 she became emotionally distressed and developed a headache, an upset stomach and diarrhea. Appellant stopped work on August 24, 1994.

The record shows that on August 22, 1994, appellant reported to the Downtown Station Post Office and found that she could not get into the compartment where her stamp stock was stored because the locks had been changed. Appellant contended that her compartment had been broken into.

On August 23, 1994 appellant was instructed to participate in an audit of her stamp stock. Appellant initially refused, contending that the audit was illegal. She also contended that management refused to allow her union representative to participate in the audit. Appellant eventually counted her stock. She indicated that upon completion of the audit, she estimated that there was a shortage of about \$3,000.00.

Appellant was also instructed to reopen her compartment and then her cash drawer. Again, appellant initially refused to do this, stating that such action was improper. Appellant indicated that after her union representative went home, management gave her two boxes filled with stamp stock and instructed her to count it and put it in her compartment. Appellant refused, again stating that such action was illegal.

Appellant stated that she was then informed of management's intent to issue a letter of demand for \$400.00. She indicated that she had no idea as to how management arrived at that figure as her estimate of the shortage was considerably higher. Appellant stated that the letter of

demand implicated guilt on her part and held her responsible for the loss. Appellant contended that management's actions were improper and led her to believe that there were persons conspiring against her.

On August 30, 1994 appellant came under the care of Dr. Edward D. Gripon, a Board-certified psychiatrist. In his January 13, 1995 medical report, Dr. Gripon reviewed appellant's history and course of treatment. He indicated that appellant's diagnosis was major depression, single episode. Dr. Gripon noted that appellant was released to work on October 31, 1994. He indicated that appellant was doing quite well, but continued to be on medication and was seen in a follow-up capacity.

By decision dated January 27, 1995, the Office of Workers' Compensation Programs denied appellant's claim finding that the evidence of record failed to establish that an injury in the performance of duty was sustained as alleged. Specifically, the Office found that the factors appellant alleged as having caused her medical condition were not within the performance of duty, but rather was a reaction to her employer's disciplinary actions, which was uncompensable under the Federal Employee's Compensation Act.

By letter dated February 24, 1995, appellant requested an oral hearing.

At the November 30, 1995 hearing, appellant was represented by Lynn Jenkins from the American Postal Workers' Union.

Appellant testified that on August 22, 1994, upon finding that her key no longer fit her compartment lock, she felt violated because her stamp stock had been removed without her knowledge. Appellant stated that she had worked as a window distribution clerk for five years and had not had any prior problems. She felt that any problem which now existed concerning her stamp stock would be straightened out. Appellant indicated that that evening, she wrote a letter to the Postmaster explaining what had taken place.

Appellant explained that she is a relief window clerk, which means that she fills in at various stations wherever she is needed. She indicated that she had not worked at the Downtown Station, where she was working on August 22, 1994, nor had she gone into her compartment at that station, for a number of weeks. Appellant stated that since she last worked at the Downtown Station, the locks had been changed and the contents of her compartment had been removed.

Appellant reiterated her previous statement regarding the audit which was conducted on August 23, 1994. She again contended that the audit was not properly performed. She also discussed the discrepancy regarding the actual amount of the shortage.

Appellant stated that she was later informed that management intended to issue a letter of demand for \$416.81. Appellant indicated that she became upset because management was blaming her for a problem which she had nothing to do with. Appellant stated that she sought medical treatment and was off work for two months.

Appellant discussed her course of treatment with Dr. Gripon. She indicated that her condition gradually improved and she eventually returned to work.

Appellant stated that on December 8, 1994, she was given the letter of demand for \$416.81. Appellant indicated that she again became emotional and stopped work. Appellant noted, however, that this occurred on a Friday and she was able to return to work the following Monday, her next regular workday.

Appellant stated that after issuing the letter of demand, management took no further action. She indicated that the situation was apparently resolved when, at the time of a rate increase, management took all of her 29 cent stamps and replaced them with 32 cent stamps, thus reestablishing her accountability.

Appellant stated that she has filed a grievance concerning the letter of demand. She noted, however, that the grievance remains unsettled because she wants management to admit that they made a mistake and mishandled the situation to make it appear that she had made the mistake.

By decision dated March 22, 1996, the Office hearing representative affirmed the denial of benefits. The Office hearing representative found that the audit conducted on August 23, 1994 was, in essence, an investigation and that the letter of demand issued on December 8, 1994, was a disciplinary action. The hearing representative noted that investigations and disciplinary actions are administrative functions and, as there was no evidence of error or abuse on the part of the employing establishment, any emotional reaction on the part of appellant to the audit and letter of demand did not constitute a compensable injury sustained in the performance of duty.

In an undated letter postmarked on July 8, 1996, appellant requested reconsideration. Arguments were presented as to why appellant believed that an injury was sustained in the performance of duty. Neither new medical evidence nor evidence of agency error was presented with appellant's request for review.

By decision dated August 20, 1996, the Office reviewed appellant's claim on the merits and concluded that the evidence submitted was insufficient to warrant modification of its prior decision.

The Board finds that appellant has failed to establish she sustained an emotional condition due to factors of her federal employment.

An employee seeking benefits under the Act¹ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition, for which compensation is claimed are causally related to the employment injury.²

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

To establish appellant's occupational disease claim that she has sustained an emotional condition in the performance of duty appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.³

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.⁴

In this case, appellant attributed her emotional condition to the audit conducted on August 23, 1994 and the December 8, 1994 letter of demand. She contends that these actions by the employing establishment were illegal, not properly performed and improper. The audit conducted on August 23, 1994 is, in essence, an investigation and the letter of demand issued on December 8, 1994 is a disciplinary action as neither is a part of appellant's regular or specially assigned duties. The Board has held that matters which do not involve an employee's regularly or specially assigned duties are administrative functions of the employing establishment and that these matters are not considered to be employment factors.⁵ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.

In regard to the investigation undertaken by the employing establishment, appellant does not argue that the employing establishment was not entitled to conduct an investigation/audit of her stamp stock, instead she argues that the audit was illegal and not properly performed. She further contends that the December 8, 1994 letter of demand was also improper. When evaluating employing establishment actions the Board applies a reasonableness standard.⁶ Appellant has not submitted any evidence to substantiate her allegations that the employing establishment acted unreasonably in the way it carried out the investigation of her stamp stock or the issuance of the letter of demand. Thus, appellant has not established a factor of employment. Although appellant has filed a grievance pertaining to these matters, a final decision on the grievance has not been issued. In the absence of specific evidence of error or abuse on the part

³ *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

⁴ *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

⁵ *Frederick D. Richardson*, 45 ECAB 454 (1994); *Jimmy B. Copeland*, 43 ECAB 339 (1991); *Arthur F. Hougens*, 42 ECAB 455 (1991).

⁶ *Thomas D. McEuen*, 42 ECAB 566, 572 (1991).

of the employing establishment, any emotional reaction on the part of appellant to the audit and letter of demand does not constitute a compensable injury sustained in the performance of duty.

As appellant has failed to attribute her emotional condition to a factor of her federal employment, the Office properly denied her claim.

The decisions of the Office of Workers' Compensation Programs dated August 20 and March 22, 1996 are hereby affirmed.

Dated, Washington, D.C.
October 26, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member